

AMENDED IN ASSEMBLY SEPTEMBER 4, 2015

AMENDED IN ASSEMBLY AUGUST 19, 2015

AMENDED IN ASSEMBLY AUGUST 18, 2015

AMENDED IN ASSEMBLY JULY 7, 2015

AMENDED IN SENATE MAY 6, 2015

AMENDED IN SENATE APRIL 15, 2015

SENATE BILL

No. 660

Introduced by Senators Leno and Hueso

February 27, 2015

An act to amend Sections 308, 309.6, 1701.1, 1701.2, 1701.3, 1701.4, and 1701.5 of, and to add Sections 305.5, 307.5, 1701.6, 1701.7, and 1701.8 to, the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 660, as amended, Leno. Public Utilities Commission.

(1) The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities. The California Constitution grants the commission certain general powers over all public utilities, subject to control by the Legislature, and authorizes the Legislature, unlimited by the other provisions of the California Constitution, to confer additional authority and jurisdiction upon the commission that is cognate and germane to the regulation of public utilities. Existing law requires the Governor to designate the president of the commission from among its members and requires the president

to direct the executive director, the attorney, and other staff of the commission, except for the Office of Ratepayer Advocates.

This bill would authorize the commission to delegate specific management and internal oversight functions to committees composed of 2 commissioners. The bill would require the commission to appoint a chief administrative law judge who would be responsible for the ~~commission's executive and administrative management and oversight~~ of the administrative law judge division and would require the chief administrative law judge to organize, coordinate, supervise, and direct the operations of the administrative law judge division as directed by the commission, consistent with commission policies and priorities.

Existing law requires the executive director to keep a full and true record of all proceedings of the commission.

This bill would delete that requirement and would instead require the chief administrative law judge to keep a full and true record of all proceedings of the commission.

(2) Existing law requires the commission, upon initiating a hearing, to assign one or more commissioners to oversee the case and an administrative law judge, where appropriate. Existing law requires the assigned commissioner to prepare and issue, by order or ruling, a scoping memo that describes the issues to be considered and the applicable timetable for resolution. Existing law requires the commission to adopt procedures on the disqualification of administrative law judges due to bias or prejudice similar to those of other state agencies and superior courts.

This bill would require the commission to additionally adopt procedures on disqualification of commissioners due to bias or prejudice similar to those of other state agencies and superior courts. For ratesetting or adjudicatory proceedings, the bill would require a commissioner or an administrative law judge to be disqualified for bias or prejudice based on specified criteria. The bill would require that the commission procedures prohibit a commissioner or administrative law judge from ruling on a motion made by a party to a proceeding to disqualify the commissioner or administrative law judge due to bias or prejudice.

(3) The Public Utilities Act requires the commission to determine whether a proceeding requires a hearing and, if so, to determine whether the matter requires a quasi-legislative, an adjudication, or a ratesetting hearing. For these purposes, quasi-legislative cases are cases that establish policy rulemakings and investigations, which may establish

rules affecting an entire industry, adjudication cases are enforcement cases and complaints, except those challenging the reasonableness of any rates or charges, and ratesetting cases are cases in which rates are established for a specific company, including general rate cases, performance-based ratemaking, and other ratesetting mechanisms. The act regulates communications in hearings before the commission and defines “ex parte communication” to mean any oral or written communication between a decisionmaker and a person with an interest in a matter before the commission concerning substantive, but not procedural, issues that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter. Existing law defines “person with an interest” to mean, among other things, a person with a financial interest in a matter before the commission, or an agent or employee of the person with a financial interest, or a person receiving consideration for representing the person with a financial interest. Existing law requires the commission, by regulation, to adopt and publish a definition of the terms “decisionmaker” and “persons” for those purposes, along with any requirements for written reporting of ex parte communications and appropriate sanctions for noncompliance with any rule proscribing ex parte communications. The act provides that ex parte communications are prohibited in adjudication cases and are prohibited in ratesetting cases, with certain exceptions. The act requires that ex parte communications be permitted in quasi-legislative cases, without any restrictions. The commission’s Rules of Practice and Procedure define a “decisionmaker” as any commissioner, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, the assigned administrative law judge, or the Law and Motion Administrative Law Judge. The Rules of Practice and Procedure provide that communications with a commissioner’s personal advisors are subject to all of the restrictions on, and reporting requirements applicable to, ex parte communications, except that oral communications with an advisor in ratesetting proceedings are permitted without the restrictions.

This bill would require that the commission determine whether every proceeding, not just those requiring a hearing, is a quasi-legislative, adjudication, or ratesetting proceeding. The bill would delete the provision that an ex parte communication concerns a substantive, but not a procedural matter, and instead would provide that an ex parte communication concerns any matter that the commission has not specified in its Rules of Practice and Procedure as being a procedural

matter and that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter. The bill would prohibit the commission from considering as a procedural matter communications between an interested person and a decisionmaker regarding which commissioner or administrative law judge may be assigned to a matter before the commission. The bill would define a person involved in issuing credit ratings or advising entities or persons who may invest in the shares or operations of any party to a proceeding as an interested person. The bill would require that the commission, by rule, adopt and publish a definition of decisionmakers, that would be required to include certain individuals in the commission. The bill would require the commission to establish and maintain a communications log summarizing all oral or written ex parte communications that occur between an interested person and ~~the commission, the attorney for the commission, the executive director of the commission, the personal staff of a commissioner, if the staff is acting in a policy or legal advisory capacity, the chief administrative law judge, or the administrative law judge assigned to the proceeding.~~ *any decisionmaker.* The bill would require the commission to post the communications log on its Internet Web site.

This bill would require that a decisionmaker, in an adjudication or ratesetting case, who makes or receives a prohibited ex parte communication, or who receives an ex parte communication that was not timely reported, to disclose certain information regarding the communication in the record of the proceeding before the commission takes a vote on the matter. If a prohibited ex parte communication is not disclosed until after the commission has issued a decision on the matter to which the communication pertained, a party not participating in the communication would be authorized to file a petition to rescind or modify the decision. The bill would require the commission to render decisions based upon the record in a case and would provide that an ex parte communication not be part of the record of the proceeding.

This bill would provide that ex parte communications are permitted in quasi-legislative proceedings, but would require that they be reported within 3 working days in the communications log maintained by the commission.

This bill would require the commission to additionally prohibit communications concerning procedural issues in adjudication cases between parties or persons with an interest and decisionmakers, except for the assigned administrative law judge.

Under existing law, the exceptions to the prohibition upon ex parte communications in ratesetting proceedings authorize a commissioner to permit oral ex parte communications if all interested parties are invited and given not less than 3 days' notice. If an ex parte communication meeting is granted to any party, it is required that all other parties also be granted individual ex parte meetings of a substantially equal period of time and that all parties be sent a notice of that authorization at the time the request is granted, at least 3 days prior to the meeting. The exceptions authorize a commissioner to permit written ex parte communications by any party provided that copies of the communication are transmitted to all parties.

This bill would delete the requirement that if an ex parte communication meeting is granted to any party in a ratesetting proceeding, that all other parties also be granted individual ex parte meetings of a substantially equal period of time and that all parties be sent a notice of that authorization at the time the request is granted, at least 3 days prior to the meeting. The bill would prohibit oral communications concerning procedural matters in ratesetting cases between parties or persons with an interest and decisionmakers other than the assigned administrative law judge, except that a commissioner would be authorized to permit an oral communication relative to procedural matters if all interested parties are invited and given not less than 3 days' notice. The bill would prohibit written ex parte communications concerning procedural matters in ratesetting cases between parties or persons with an interest and decisionmakers other than the assigned administrative law judge, except that a commissioner would be authorized to permit a written communication relative to procedural issues by any party provided that copies of the communication are transmitted to all parties on the same day.

This bill would expressly make the prohibitions upon ex parte communications that relate to adjudicatory or ratesetting proceedings applicable to ex parte communications that occur at conferences, as defined. The bill would also make the requirements that pertain to ex parte communications that relate to quasi-legislative proceedings applicable to ex parte communications that occur at conferences.

This bill would authorize the commission to impose civil sanctions, including civil penalties, on any entity or person, other than a decisionmaker or employee of the commission, that violates ex parte communication requirements. The bill would authorize the Attorney General to bring an enforcement action in the Superior Court of the

City and County of San Francisco against a decisionmaker or employee of the commission who violates the ex parte communication requirements.

This bill would incorporate additional changes in Section 308 of the Public Utilities Code, proposed by SB 48, to be operative only if SB 48 and this bill are both chaptered and become effective on or before January 1, 2016, and this bill is chaptered last.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by expanding the application of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 305.5 is added to the Public Utilities
2 Code, to read:

3 305.5. ~~(a)~~ The commission may delegate specific management
4 and internal oversight functions to committees composed of two
5 commissioners. Committees shall meet regularly with staff and
6 shall report to the commission for additional guidance or approval
7 of decisions pertaining to the operations of the commission.

8 ~~(b) The commission shall vote in an open meeting on the~~
9 ~~assignment or reassignment of any proceeding to one or more~~
10 ~~commissioners.~~

11 SEC. 2. Section 307.5 is added to the Public Utilities Code, to
12 read:

13 307.5. (a) The commission shall appoint a chief administrative
14 law judge, who shall hold office at the pleasure of the commission.

15 (b) The chief administrative law judge shall be responsible for
16 ~~the commission's executive and administrative management and~~

oversight of the administrative law judge division and shall organize, coordinate, supervise, and direct the operations of the division as directed by the commission, consistent with commission policies and priorities.

(c) The chief administrative law judge shall keep a full and true record of all proceedings of the commission.

SEC. 3. Section 308 of the Public Utilities Code is amended to read:

308. (a) The commission shall appoint an executive director, who shall hold office during its pleasure. The executive director shall be responsible for the commission's executive and administrative duties and shall organize, coordinate, supervise, and direct the operations and affairs of the commission and expedite all matters within the commission's jurisdiction.

(b) The executive director shall issue all necessary process, writs, warrants, and notices, and perform any other duties as the commission prescribes. The president or, by vote, the commission may authorize the executive director to dismiss complaints or applications when all parties are in agreement thereto, in accordance with rules that the commission may prescribe.

(c) The commission may appoint assistant executive directors who may serve warrants and other process in any county or city and county of this state.

SEC. 3.5. *Section 308 of the Public Utilities Code is amended to read:*

308. (a) The commission shall appoint an executive director, who shall hold office during its pleasure. The executive director shall be responsible for the commission's executive and administrative duties and shall organize, coordinate, supervise, and direct the operations and affairs of the commission and expedite all matters within the commission's jurisdiction.

(b) The executive director shall ~~keep a full and true record of all proceedings of the commission,~~ issue all necessary process, writs, warrants, and notices, and perform ~~such~~ any other duties as ~~the president, or vote of the commission, prescribes. The president~~ *the commission prescribes. The commission* may authorize the executive director to dismiss complaints or applications when all parties are in agreement thereto, in accordance with rules that the commission may prescribe.

1 (c) The commission may appoint assistant executive directors
2 who may serve warrants and other process in any county or city
3 and county of this state.

4 SEC. 4. Section 309.6 of the Public Utilities Code is amended
5 to read:

6 309.6. (a) The commission shall adopt procedures on the
7 disqualification of commissioners and administrative law judges
8 due to bias or prejudice similar to those of other state agencies and
9 superior courts.

10 (b) (1) For ratesetting and adjudicatory proceedings, a
11 commissioner or administrative law judge shall be disqualified for
12 bias or prejudice based on any of the following:

13 (A) Actions taken during the proceeding.

14 (B) Private communications before the commencement of the
15 proceeding to influence the request for relief sought by any party
16 to the proceeding.

17 (C) Actions demonstrating any commitment to provide relief
18 to a party.

19 (2) Past work experience by the commissioner or administrative
20 law judge shall not be a sufficient basis for demonstrating bias or
21 prejudice pursuant to paragraph (1).

22 (c) The commission procedures shall prohibit a commissioner
23 or administrative law judge from ruling on a motion made by a
24 party to a proceeding to disqualify the commissioner or
25 administrative law judge due to bias or prejudice.

26 (d) The commission shall develop the procedures with the
27 opportunity for public review and comment.

28 SEC. 5. Section 1701.1 of the Public Utilities Code is amended
29 to read:

30 1701.1. (a) ~~The commission, consistent with due process,~~
31 ~~public policy, and statutory requirements, shall determine whether~~
32 ~~a proceeding requires a hearing. The commission shall determine~~
33 ~~whether each proceeding is a quasi-legislative, an adjudication, or~~
34 ~~a ratesetting proceeding. proceeding and, consistent with due~~
35 ~~process, public policy, and statutory requirements, determine~~
36 ~~whether the proceeding requires a hearing.~~ The commission's
37 decision as to the nature of the proceeding shall be subject to a
38 request for rehearing within 10 days of the date of that decision.
39 If that decision is not appealed to the commission within that time
40 period it shall not be subsequently subject to judicial review. Only

those parties who have requested a rehearing within that time period shall subsequently have standing for judicial review and that review shall only be available at the conclusion of the proceeding. The commission shall render its decision regarding the rehearing within 30 days. The commission shall establish rules regarding ex parte communication on case categorization issues.

(b) The commission upon initiating an adjudication ~~hearing~~ *proceeding* or ratesetting ~~hearing~~ *proceeding* shall assign one or more commissioners to oversee the case and an administrative law judge where appropriate. The assigned commissioner shall schedule a prehearing conference. The assigned commissioner shall prepare and issue by order or ruling a scoping memo that describes the issues to be considered and the applicable timetable for resolution. The administrative law judge shall either preside and conduct, or assist the assigned commissioner or commissioners in presiding and conducting, any evidentiary or adjudication hearing that may be required.

(c) The commission upon initiating a quasi-legislative ~~hearing~~ *proceeding* shall assign one or more commissioners to oversee the case and an administrative law ~~judge~~ *judge, where appropriate*, who may be assisted by a technical advisory staff member in conducting the proceeding. The assigned commissioner shall prepare and issue by order or ruling a scoping memo that describes the issues to be considered and the applicable timetable for resolution.

(d) (1) Quasi-legislative cases, for purposes of this article, are cases that establish policy, including, but not limited to, rulemakings and investigations which may establish rules affecting an entire industry.

(2) Adjudication cases, for purposes of this article, are enforcement cases and complaints except those challenging the reasonableness of any rates or charges as specified in Section 1702.

(3) Ratesetting cases, for purposes of this article, are cases in which rates are established for a specific company, including, but not limited to, general rate cases, performance-based ratemaking, and other ratesetting mechanisms.

(4) ~~“En banc hearing,”~~ *“All party conference,”* for purposes of this article, is a public hearing held on the record before a quorum of commissioners at which parties to a proceeding shall have the

1 right to participate and let their views be heard regarding any
2 factual, legal, or policy issue in the proceeding.

3 (e) (1) (A) “Ex parte communication,” for purposes of this
4 article, means any oral or written communication between a
5 decisionmaker and an interested person concerning any matter
6 before the commission that the commission has not specified in
7 its Rules of Practice and Procedure as being a procedural matter
8 and that does not occur in a public hearing, workshop, or other
9 public proceeding, or on the official record of the proceeding on
10 the matter. The commission shall specify in its Rules of Practice
11 and Procedure, enacted by rulemaking, the types of issues
12 considered procedural matters under this article. Any
13 communication between an interested person and a decisionmaker
14 regarding which commissioner or administrative law judge may
15 be assigned to a matter before the commission shall not be deemed
16 to be a procedural matter and shall be an ex parte communication
17 subject to this article.

18 (B) “Interested person,” for purposes of this article, means any
19 of the following:

20 (i) Any applicant, an agent or an employee of the applicant, or
21 a person receiving consideration for representing the applicant, or
22 a party to the proceeding on any matter before the commission.

23 (ii) Any person with a financial interest, as described in Article
24 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the
25 Government Code, in a matter before the commission, or an agent
26 or employee of the person with a financial interest, or a person
27 receiving consideration for representing the person with a financial
28 interest. A person involved in issuing credit ratings or advising
29 entities or persons who may invest in the shares or operations of
30 any party to a proceeding is a person with a financial interest.

31 (iii) A representative acting on behalf of any civic,
32 environmental, neighborhood, business, labor, trade, or similar
33 organization who intends to influence the decision of a commission
34 member on a matter before the commission.

35 (iv) Other categories of individuals deemed by the commission,
36 by rule, to be an interested person.

37 (2) The commission shall by rule adopt and publish a definition
38 of decisionmakers and interested persons for purposes of this
39 ~~section~~, *article*, along with any requirements for written reporting
40 of ex parte communications and appropriate sanctions for

1 noncompliance with any rule proscribing ex parte communications.
2 The definition of decisionmakers shall include, but is not limited
3 to, each commissioner; the attorney for the commission; the
4 executive director of the commission; the personal staff of a
5 commissioner if the staff is acting in a policy or legal advisory
6 capacity; the chief administrative law judge of the commission;
7 and the administrative law judge assigned to the proceeding.

8 (3) For adjudication and ratesetting cases, the rules shall provide
9 that ex parte communications shall be prohibited, as required by
10 this article. The rules shall provide that if an ex parte
11 communication occurs that is prohibited by this article, whether
12 initiated by a decisionmaker or an interested person, all of the
13 following shall be required:

14 (A) The interested person shall report the communication within
15 one working day of the communication by filing a notice with the
16 commission that includes all the following:

17 (i) The date, time, and location of the communication, whether
18 the communication was oral, or written, or a combination of both,
19 and the communication medium utilized.

20 (ii) The identity of the decisionmaker, the identity of the person
21 initiating the communication, and any other persons present.

22 (iii) A complete and comprehensive description of the interested
23 person's and the decisionmaker's communication and its content.

24 (iv) A copy of any written material or text used during the
25 communication.

26 (B) Any decisionmaker who participated in the communication
27 shall comply with both of the following:

28 (i) If the interested person who participated in the
29 communication has not timely submitted the notice required by
30 subparagraph (A), the decisionmaker shall promptly prepare and
31 file a notice that includes the information required by subparagraph
32 (A).

33 (ii) If the interested person has timely submitted the notice
34 required by subparagraph (A), the decisionmaker shall either
35 promptly file a notice affirming the factual representations made
36 by the interested person in the notice or promptly file a notice
37 correcting or supplementing the factual representations made by
38 the interested person.

39 (4) The commission shall not take any vote on a matter where
40 a notice has been filed pursuant to subparagraph (A) or (B) of

1 paragraph (3) until all parties to the proceeding have been provided
2 a reasonable opportunity to respond to the communication.

3 (5) If a prohibited ex parte communication is not disclosed as
4 required by this subdivision until after the commission has issued
5 a decision on the matter to which the prohibited communication
6 pertained, a party not participating in the communication may file
7 a petition to rescind or modify the decision. The party may seek
8 a finding that the ex parte communication was prohibited and
9 significantly influenced the decision's process or outcome as part
10 of any petition to rescind or modify the decision. The commission
11 shall process the petition in accordance with the commission's
12 procedures for petitions for modification and shall issue a decision
13 on the petition no later than 180 days after the filing of the petition.

14 (6) (A) Ex parte communications that occur at conferences that
15 are related to an adjudication or ratesetting proceeding shall be
16 prohibited consistent with the ex parte communications
17 requirements of this article.

18 (B) Ex parte communications that occur at conferences and that
19 are related to a quasi-legislative proceeding shall be governed by
20 the ex parte communication disclosure requirements developed
21 by the commission.

22 (C) For purposes of this section, "ex parte communications that
23 occur at conferences" includes, but is not limited to,
24 communications in a private setting or during meals, entertainment
25 events, and tours, and informal discussions among conference
26 attendees.

27 (7) The commission shall render its decisions based on the
28 evidence in the record. Ex parte communications shall not be a
29 part of the record of the proceedings.

30 (f) The commission may meet in a closed session to discuss
31 administrative matters ~~not related to a proceeding before the~~
32 ~~commission~~, so long as no collective consensus is reached or vote
33 taken on any matter requiring a vote of the commissioners. *The*
34 *commission shall, by rule, adopt and publish a definition of*
35 *"administrative matters" for purposes of this section.*

36 SEC. 6. Section 1701.2 of the Public Utilities Code is amended
37 to read:

38 1701.2. If the commission pursuant to Section 1701.1 has
39 determined that an adjudication case requires a hearing, the
40 procedures prescribed by this section shall be applicable.

1 (a) The assigned commissioner or the assigned administrative
2 law judge shall hear the case in the manner described in the scoping
3 memo. The scoping memo shall designate whether the assigned
4 commissioner or the assigned administrative law judge shall preside
5 in the case.

6 (b) The commission shall provide by rule for peremptory
7 challenges and challenges for cause of the administrative law judge.
8 Challenges for cause shall include, but not be limited to, financial
9 interests and prejudice. The rule shall provide that all parties are
10 entitled to one peremptory challenge of the assignment of the
11 administrative law judge in all cases. All parties are entitled to
12 unlimited peremptory challenges in any case in which the
13 administrative law judge has within the previous 12 months served
14 in any capacity in an advocacy position at the commission, been
15 employed by a regulated public utility, or has represented a party
16 or has been an interested person in the case.

17 (c) The assigned commissioner or the administrative law judge
18 shall prepare and file a decision setting forth recommendations,
19 findings, and conclusions. The decision shall be filed with the
20 commission and served upon all parties to the action or proceeding
21 without undue delay, not later than 60 days after the matter has
22 been submitted for decision. The decision of the assigned
23 commissioner or the administrative law judge shall become the
24 decision of the commission if no further action is taken within 30
25 days. Any party may appeal the decision to the commission,
26 provided that the appeal is made within 30 days of the issuance of
27 the decision. The commission may itself initiate a review of the
28 proposed decision on any grounds.

29 (d) ~~The~~ *Upon request made by a majority of parties, the*
30 *commission shall hold an en-banc hearing all-party conference*
31 *before a quorum of commissioners, in all adjudication cases in*
32 *which an appeal has been filed, at which all parties have an*
33 *opportunity to be heard, unless all parties waive this requirement*
34 *and a majority of commissioners concur with that waiver. The*
35 *commission shall adopt rules for implementation of this*
36 *requirement, which shall provide for the broadest participation by*
37 *parties to the proceeding that the commission can reasonably*
38 *accommodate, consistent with the commissioners' other duties*
39 *and responsibilities.*

1 (e) The commission's decision shall be supported by findings
2 of fact on all issues material to the decision, and the findings of
3 fact shall be based on the record developed by the assigned
4 commissioner or the administrative law judge. A decision different
5 from that of the assigned commissioner or the administrative law
6 judge shall be accompanied by a written explanation of each of
7 the changes made to the decision.

8 (f) Notwithstanding Section 307, an officer, employee, or agent
9 of the commission that is personally involved in the prosecution
10 or in the supervision of the prosecution of an adjudication case
11 before the commission shall not participate in the decision of the
12 case, or in the decision of any factually related adjudicatory
13 proceeding, including participation in or advising the commission
14 as to findings of fact, conclusions of law, or orders. An officer,
15 employee, or agent of the commission that is personally involved
16 in the prosecution or in the supervision of the prosecution of an
17 adjudication case may participate in reaching a settlement of the
18 case, but shall not participate in the decision of the commission to
19 accept or reject the settlement, except as a witness or counsel in
20 an open hearing or a hearing closed pursuant to subdivision (h).
21 The Legislature finds that the commission performs both
22 prosecutorial and adjudicatory functions in an adjudication case
23 and declares its intent that an officer, employee, or agent of the
24 commission, including its attorneys, may perform only one of
25 those functions in any adjudication case or factually related
26 adjudicatory proceeding.

27 (g) (1) Ex parte communications shall be prohibited in
28 adjudication cases.

29 (2) Any oral or written communications concerning procedural
30 matters in adjudication cases between interested persons and
31 decisionmakers, except the assigned administrative law judge,
32 shall be prohibited.

33 (h) Notwithstanding any other law, the commission may meet
34 in a closed hearing to consider the decision that is being appealed.
35 The vote on the appeal shall be in a public meeting and shall be
36 accompanied with an explanation of the appeal decision.

37 (i) Adjudication cases shall be resolved within 12 months of
38 initiation unless the commission makes findings why that deadline
39 cannot be met and issues an order extending that deadline. In the

1 event that a rehearing of an adjudication case is granted, the parties
2 shall have an opportunity for final oral argument.

3 (j) (1) The commission may determine that the respondent
4 lacks, or may lack, the ability to pay potential penalties or fines
5 or to pay restitution that may be ordered by the commission.

6 (2) If the commission determines that a respondent lacks, or
7 may lack, the ability to pay, the commission may order the
8 respondent to demonstrate, to the satisfaction of the commission,
9 sufficient ability to pay potential penalties, fines, or restitution that
10 may be ordered by the commission. The respondent shall
11 demonstrate the ability to pay, or make other financial
12 arrangements satisfactory to the commission, within seven days
13 of the commission commencing an adjudication case. The
14 commission may delegate to the attorney to the commission the
15 determination of whether a sufficient showing has been made by
16 the respondent of an ability to pay.

17 (3) Within seven days of the commission's determination of the
18 respondent's ability to pay potential penalties, fines, or restitution,
19 the respondent shall be entitled to an impartial review by an
20 administrative law judge of the sufficiency of the showing made
21 by the respondent of the respondent's ability to pay. The review
22 by an administrative law judge of the ability of the respondent to
23 pay shall become part of the record of the adjudication and is
24 subject to the commission's consideration in its order resolving
25 the adjudication case. The administrative law judge may enter
26 temporary orders modifying any financial requirement made of
27 the respondent pending the review by the administrative law judge.

28 (4) A respondent that is a public utility regulated under a rate
29 of return or rate of margin regulatory structure or that has gross
30 annual revenues of more than one hundred million dollars
31 (\$100,000,000) generated within California is presumed to be able
32 to pay potential penalties or fines or to pay restitution that may be
33 ordered by the commission, and, therefore, paragraphs (1) to (3),
34 inclusive, do not apply to that respondent.

35 SEC. 7. Section 1701.3 of the Public Utilities Code is amended
36 to read:

37 1701.3. If the commission pursuant to Section 1701.1 has
38 determined that a ratesetting case requires a hearing, the procedures
39 prescribed by this section shall be applicable.

1 (a) The assigned commissioner shall determine prior to the first
2 hearing whether the commissioner or the assigned administrative
3 law judge shall be designated as the principal hearing officer. The
4 principal hearing officer shall be present for more than one-half
5 of the hearing days. The decision of the principal hearing officer
6 shall be the proposed decision.

7 (b) An alternate decision may be issued by the assigned
8 commissioner or the assigned administrative law judge who is not
9 the principal hearing officer. Any alternate decision may be filed
10 with the commission and served upon all parties to the proceeding
11 any time prior to issuance of a final decision by the commission,
12 consistent with the requirements of Section 311.

13 (c) The commission shall establish a procedure for any party to
14 request the presence of a commissioner at a hearing. The assigned
15 commissioner shall be present at the closing arguments of the case.

16 (d) The principal hearing officer shall present the proposed
17 decision to the full commission in a public meeting. The alternate
18 decision, if any, shall also be presented to the full commission at
19 that public meeting.

20 (e) The presentation to the full commission shall contain a record
21 of the number of days of the hearing, the number of days that each
22 commissioner was present, and whether the decision was completed
23 on time.

24 (f) The commission shall provide by regulation for peremptory
25 challenges and challenges for cause of the administrative law judge.
26 Challenges for cause shall include, but not be limited to, financial
27 interests and prejudice. All parties shall be entitled to unlimited
28 peremptory challenges in any case in which the administrative law
29 judge has within the previous 12 months served in any capacity
30 in an advocacy position at the commission, been employed by a
31 regulated public utility, or has represented a party or has been an
32 interested person in the case.

33 (g) (1) Ex parte communications are prohibited in ratesetting
34 cases.

35 (A) Oral communications may be permitted by a decisionmaker
36 if all parties are invited and given not less than three working days'
37 notice.

38 (B) Written ex parte communications by any interested person
39 may be permitted provided that copies of the communication are
40 transmitted to all parties on the same day as the original

1 communication. Written ex parte communications shall not be part
2 of the record of the proceeding.

3 (C) The commission may establish a period during which no
4 oral or written all-party communications may be permitted and
5 the commission may meet in closed session during that period,
6 which shall not in any circumstance exceed 14 days. If the
7 commission holds the decision, it may permit all-party
8 communications during the first half of the interval between the
9 hold date and the date that the decision is calendared for final
10 decision. The commission may meet in closed session for the
11 second half of that interval.

12 (2) Oral communications concerning a procedural matter in
13 ratesetting cases between interested persons and decisionmakers,
14 except the assigned administrative law judge, are prohibited, except
15 that an oral communication may be permitted at any time by any
16 decisionmaker if all parties are invited and given not less than
17 three working days' notice.

18 (3) Written communications concerning a procedural matter in
19 ratesetting cases between interested persons and decisionmakers,
20 except the assigned administrative law judge, are prohibited, except
21 that a decisionmaker may permit a written communication by any
22 party if copies of the communication are transmitted to all parties
23 on the same day.

24 (h) ~~The~~ *Upon request made by a majority of parties, the*
25 *commission shall hold an en-banc hearing all-party conference*
26 *before a quorum of commissioners, after the proposed decision is*
27 *issued in all contested ratesetting cases, at which all parties have*
28 *an opportunity to be heard, unless all parties waive this requirement*
29 *and a majority of commissioners concur with that waiver. The*
30 *commission shall adopt rules for implementation of this*
31 *requirement, which shall provide for the broadest participation by*
32 *parties to the proceeding that the commission can reasonably*
33 *accommodate, consistent with the commissioners' other duties*
34 *and responsibilities.*

35 (i) The commission may, in issuing its decision, adopt, modify,
36 or set aside the proposed decision or any part of the decision based
37 on evidence in the record. The final decision of the commission
38 shall be issued not later than 60 days after the issuance of the
39 proposed decision. Under extraordinary circumstances the
40 commission may extend this date for a reasonable period. The

1 60-day period shall be extended for 30 days if any alternate
2 decision is proposed pursuant to Section 311.

3 SEC. 8. Section 1701.4 of the Public Utilities Code is amended
4 to read:

5 1701.4. If the commission pursuant to Section 1701.1 has
6 determined that a quasi-legislative case requires a hearing, the
7 procedures prescribed by this section shall be applicable.

8 (a) The assigned administrative law judge *and any assigned*
9 *technical advisory staff* shall act as an assistant to the assigned
10 commissioner in quasi-legislative cases. The assigned
11 commissioner shall prepare the proposed rule or order with the
12 assistance of the administrative law ~~judge~~ *judge and any assigned*
13 *technical advisory staff*. The assigned commissioner shall present
14 the proposed rule or order to the full commission in a public
15 meeting. The report shall include the number of days of hearing
16 and the number of days that the commissioner was present.

17 (b) Ex parte communications shall be permitted. Any ex parte
18 communication shall be reported in compliance with Section
19 1701.6. No reporting shall be required for written ex parte
20 communications that are transmitted to all parties on the same day
21 as the original communication.

22 (c) ~~The~~ *Upon request made by a majority of parties, the*
23 *commission shall hold an en-banc hearing all-party conference*
24 *before a quorum of commissioners, after the proposed decision is*
25 *issued in all contested quasi-legislative cases, unless all parties*
26 *waive this requirement and a majority of commissioners concur*
27 *with that waiver. The commission shall adopt rules for*
28 *implementation of this requirement, which shall provide for the*
29 *broadest participation by parties to the proceeding that the*
30 *commission can reasonably accommodate, consistent with the*
31 *commissioners' other duties and responsibilities.*

32 (d) The commission may, in issuing its rule or order, adopt,
33 modify, or set aside the proposed decision or any part of the rule
34 or order. The final rule or order of the commission shall be issued
35 not later than 60 days after the issuance of the proposed rule or
36 order. Under extraordinary circumstances the commission may
37 extend this date for a reasonable period. The 60-day period shall
38 be extended for 30 days if any alternate rule or order is proposed
39 pursuant to Section 311.

1 SEC. 9. Section 1701.5 of the Public Utilities Code is amended
2 to read:

3 1701.5. (a) Except as specified in subdivision (b), in a
4 ratesetting or quasi-legislative case, the commission shall resolve
5 the issues raised in the scoping memo within 18 months of the date
6 the proceeding is initiated, unless the commission makes a written
7 determination that the deadline cannot be met, including findings
8 as to the reason, and issues an order extending the deadline. ~~No~~
9 ~~single order may extend the deadline for more than 60 days.~~

10 (b) Notwithstanding subdivision (a), the commission may
11 specify in a scoping memo a resolution date later than 18 months
12 from the date the proceeding is initiated, if that scoping memo
13 includes specific reasons for the necessity of a later date and the
14 commissioner assigned to the case approves the date.

15 SEC. 10. Section 1701.6 is added to the Public Utilities Code,
16 to read:

17 1701.6. (a) The commission shall establish and maintain a
18 communications log summarizing all oral ~~or~~ and written ex parte
19 communications, as defined in Section 1701.1.

20 (b) The communications log shall include a summary of all oral
21 and written communications that meet the definition of an ex parte
22 communication that occur between an interested person and any
23 ~~of the following officials:~~ *decisionmaker*.

24 ~~(1) A commissioner.~~

25 ~~(2) The attorney for the commission.~~

26 ~~(3) The executive director of the commission.~~

27 ~~(4) The personal staff of a commissioner, if the staff is acting~~
28 ~~in a policy or legal advisory capacity.~~

29 ~~(5) The chief administrative law judge of the commission.~~

30 ~~(6) The administrative law judge assigned to the proceeding.~~

31 (c) Each record of a communication in the communication log
32 shall include the date of each communication, the persons involved
33 in the communication, ~~the topics discussed,~~ and, to the extent
34 known, any proceedings that were the subject of each
35 communication. Ex parte communications in the summary log
36 shall be reported no later than three working days after the
37 communication.

38 (d) The communication log shall be made available to the public
39 on the commission's Internet Web site not later than July 1, 2016.

1 SEC. 11. Section 1701.7 is added to the Public Utilities Code,
2 to read:

3 1701.7. (a) In addition to any penalty, fine, or other punishment
4 applicable pursuant to Article 11 (commencing with Section 2100),
5 the commission may assess civil sanctions upon any entity or
6 person, other than a decisionmaker or employee of the commission,
7 who violates, fails to comply with, or procures, aids, or abets any
8 violation of, the ex parte communication requirements of this
9 article or those adopted by the commission pursuant to this article.
10 The civil sanctions may include civil penalties, adverse
11 consequences in commission proceedings, or other appropriate
12 commission orders directed at the entity, person, or both the entity
13 and person, committing the violation.

14 (b) (1) Except as provided in paragraph (2), a civil penalty
15 assessed shall not exceed fifty thousand dollars (\$50,000) per
16 violation. Each day of a continuing violation is a separate violation.
17 If the violation consists of engaging in a communication that is
18 prohibited by the ex parte communication requirements, each day
19 that the violation is not disclosed to the commission and to parties
20 of record in the formal proceeding in which the communication
21 occurred shall constitute a separate violation.

22 (2) If the entity or person may obtain, by violating the ex parte
23 communication requirements, financial benefits that exceed the
24 maximum amount of civil penalty allowable pursuant to paragraph
25 (1), the commission may impose a civil penalty up to the amount
26 of those financial benefits.

27 (c) Civil penalties assessed pursuant to subdivision (b) upon
28 entities whose rates are determined by the commission shall be in
29 the form of credits to the customers of that entity. Civil penalties
30 collected from other entities shall be deposited in the General Fund.

31 (d) In determining the appropriate civil sanctions, the
32 commission shall consider the following factors:

33 (1) The severity of the violation.

34 (2) The conduct of the entity or person, including the level of
35 experience of the entity or person in participating in commission
36 proceedings and whether the entity or person knowingly violated
37 the ex parte communication requirements.

38 (3) The financial resources of the entity or person.

39 (4) The totality of the circumstances in furtherance of the public
40 interest.

1 SEC. 12. Section 1701.8 is added to the Public Utilities Code,
2 to read:

3 1701.8. (a) The Attorney General may bring an enforcement
4 action in the Superior Court for the City and County of San
5 Francisco against a decisionmaker or employee of the commission
6 who violates, fails to comply with, or procures, aids, or abets any
7 violation of, the ex parte communication requirements in this article
8 or those adopted by the commission pursuant to this article. The
9 court shall expedite its review of the action to provide effective
10 and timely relief.

11 (b) Notwithstanding Section 1759, in an enforcement action
12 brought pursuant to this section, the court may grant appropriate
13 relief, including disqualification of the decisionmaker from one
14 or more proceedings and civil penalties as provided in Section
15 2111.

16 (c) In determining the appropriate relief, the court may consider
17 the following factors:

18 (1) The severity of the violation.

19 (2) The conduct of the decisionmaker or employee, including
20 whether the decisionmaker or employee knowingly violated the
21 ex parte communication requirements.

22 (3) The financial resources of the decisionmaker or employee.

23 (4) The totality of the circumstances in furtherance of the public
24 interest.

25 (d) The Attorney General may compromise the enforcement
26 action subject to approval by the court.

27 (e) Civil penalties collected pursuant to this section shall be
28 deposited into the Litigation Deposits Fund established pursuant
29 to Article 9 (commencing with Section 16425) of Chapter 2 of
30 Part 2 of Division 4 of Title 2 of the Government Code.

31 *SEC. 13. Section 3.5 of this bill incorporates amendments to*
32 *Section 308 of the Public Utilities Code proposed by both this bill*
33 *and Senate Bill 48. It shall only become operative if (1) both bills*
34 *are enacted and become effective on or before January 1, 2016,*
35 *(2) each bill amends Section 308 of the Public Utilities Code, and*
36 *(3) this bill is enacted after Senate Bill 48, in which case Section*
37 *3 of this bill shall not become operative.*

38 ~~SEC. 13.~~

39 *SEC. 14.* No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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